IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Kayum Khan Vs. Additional Divisional Commissioner Jaipur & Others
(SB Civil Writ Petition No.104/1996)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: October 26, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. A.K.Bhandari, for the petitioner.

Mr. V.V.Harit, for respondents.

BY THE COURT:

The petitioner in the instant writ petition seeks to quash the orders dated April 26, 1995 and August 16, 1995.

2. Contextual facts depict that ancestors of Alam Khan were in possession of land measuring 61 x 51 ft. in Sarwana ka Mohalla village Manoharpur Tehsil Shahpura for last more than 60 years. The State Government decided to regularise the old possession and grant them Patta with regard to land in their possession and various notifications were issued. Alam Khan moved an application to Municipal Board, Manoharpur for regularisation of the possession of land in question. The Municipal Board Manoharpur after issuing notice, calling objections obtained the report of Ward Member. Who on June 15, 1983 inspected the site and reported that the land in question 61 x 50 ft. totalling 336 8/9 sq.yards was in the

possession of ancestors of Bundu Khan. Thereafter Municipal Board took decision to regularise the possession after charging the price. On February 16, 1984 the amount of regularisation charges and permission fees for construction was calculated as Rs.1069/-, which was deposited by the petitioner on November 22, 1985 and the map was approved. The sale deed was got registered by Administrator with the Sub Registrar Shahpura on April 8, 1986. On some quarry by Rajasthan Financial Corporation the Municipal Board Manoharpur cleared that the land was given to petitioner under Rule 4 of the Municipal Board (Disposal of Urban Land) Rules,1974 and the valuation of the property was assessed as Rs.2 lacs.

Subsequently after 9 years of the regularisation of the land in question, the respondents No.2&3 filed revision petition under section 300 before the Additional Divisional Commissioner Jaipur Division. The petitioner filed objection and submitted that the sale was in accordance with law. He further submitted that after 9 years of the construction the revision is not maintainable and only the Civil Court can set aside registered sale deed, for which the civil suit is already pending. However vide order dated April 26, 1995 the revision petition was accepted. The review petition filed by petitioner was also dismissed vide order dated August 16, 1995. It is against these orders that the instant writ petition has been preferred.

3. I have heard learned counsel for the parties.

4. At this juncture I deem it proper to refer to Section 300 of Rajasthan Municipalities Act,1959 (for short `1959 Act') which reads as under:-

"300. Power to call for records:- (1) The State Government or

> any authority authorised in this behalf by the State Government may for the purpose of being satisfied as to the correctness, legality or propriety of any order passed or purporting to have been passed, under this Act, by or on behalf of any board, its chairman, vice- chairman, any member or officer, or a Collector or other officer appointed by the State Government in that behalf call for the relevant record, and may, in doing so, direct that pending the examination of such record, such order shall be held in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the authority authorised in this behalf by the State Government under section (2)
> (2) On examining the records the officer or authority authorised as aforesaid may reverse or modify such order."

5. A look at section 300 of the 1959 Act goes to show that period of limitation for filing the revision has not been prescribed. An attempt, therefore, has been made on behalf of respondents to justify the impugned orders on the ground that since the period of limitation was not prescribed, the revision could be entertained even after 9 years. I am not impressed with this submission.

6. `Laches' is such negligence or omission to assert a right as taken in conjunction with the lapse of time, more or less great and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity. No relief is ordinarily granted to a person who does not seek his remedy with due diligence. The aggrieved party must be very vigilant and seek relief at the earliest date. If he fails to do so and has no satisfactory explanation for the delay, then his petition is liable to be thrown out in limine. Unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the courts in deciding whether or not to exercise revisional, appellate or writ jurisdiction.

The Court is required to take into consideration all the facts of the case in determining whether there has been undue delay in approaching the court or whether the delay is justified or excusable.

7. In the instant matter where the delay of 9 years in filing the revision petition was not explained, there should be satisfactory explanation for the exercise of revisional power after the reasonable length of time. The Additional Divisional Commissioner Jaipur Division, in my opinion, acted arbitrarily in exercising jurisdiction under section 300 of 1959 Act after a lapse of 9 years.

6. For these reasons, I find it a fit case warranting interference under Article 226 of the Constitution. The writ petition accordingly stands allowed, the orders dated April 26, 1995 and August 16, 1995 are set aside. There shall be no order as to costs.

(Shiv Kumar Sharma)J.

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